

EXHIBIT 2

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5 CASICLAO vs. SCHUMACHER

6

7 DATE: 07/08/2022

8 WITNESS: KIMBERLY MEHLMAN-OROZCO

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17 Corrections will be made in the
18 preparation of the certified transcription,
19 resulting in differences in content, page
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21 formatting.

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23

17 labor -- the historical interpretation of
18 forced labor, especially via the U.S. v.
19 Kozminski case, is physical methods of
20 force were necessary and the impetus of the
21 TVPA was to expand upon that. So they're
22 not one and the same.

23 Q. And is forced labor under the
24 TVPA equivalent to modern slavery?

25 A. Is forced labor -- I would say

18

1 no because modern slavery includes other
2 forms of trafficking. So modern slavery
3 includes sex trafficking, for example,
4 which I would not say is akin to forced
5 labor.

6 Q. And so forced labor and sex
7 trafficking are different forms of let's
8 call it abuse, is that correct?

9 A. Sure, but I wouldn't
10 conceptualize it that way. I mean, I don't
11 disagree with you, but if I were to
12 conceptual lies human trafficking I would
13 say there's an umbrella notion of human
14 trafficking and that two major subsections

15 are labor trafficking and sex trafficking.

16 And in each of those there are different
17 forms of labor trafficking and sex
18 trafficking.

19 So for example, in the
20 database -- part of the cases that I
21 excluded from the database included
22 international sex tourism. The indicia of
23 international sex tourism is not relevant
24 for this case. But that is a very unique
25 form of sex trafficking, is a very unique

19

1 form of abuse, as you say, that could be
2 addressed under the TVPA. And I apologize,
3 I'm trying to talk slow.

4 Q. So you mentioned that sex
5 tourism has unique indicia. So would it be
6 fair to say that labor trafficking and sex
7 trafficking generally have different forms
8 of indicia?

9 A. I would say -- I mean, if I
10 were -- I think that there are indicia that
11 apply to trafficking as a whole. There are
12 methods of recruitment that apply to

13 trafficking as a whole. For example, in my
14 book I talk about how traffickers often
15 look for voids in a potential victim's life
16 and make a false promise to fulfill those
17 voids. And I use Maslow's, M-A-S-L-O-W-S,
18 hierarchy of needs to demonstrate that.
19 For example, a trafficker might make the
20 false promise -- a domestic sex trafficker
21 in particular or even international could
22 make the false promise to fulfill a
23 victim's basic physiological needs, need
24 for safety, esteem, love and belonging and
25 self actualization.

20

1 And so I would say that there
2 is considerable overlap, but there are some
3 unique methods of recruitment and control
4 by type of trafficking. If that makes
5 sense.

6 Q. Sure. And to keep us moving
7 forward, if we could focus when we talk
8 about indicia on indicia that are relevant
9 to labor trafficking, so we can keep things
10 going forward. Does that make sense?

11 A. Sure.

12 Q. Great.

13 So you've talked about your
14 report, what you believe is the scope of a
15 trafficking claim under the TVPA. What are
16 you basing your opinion on?

17 A. So my opinions were looking at
18 is this consistent with trafficking. Is
19 this consistent with trafficking. And I
20 base my opinions as I always do on state of
21 the science research and information. So
22 I'm looking at a combination of cases that
23 I personally reviewed for seams and threads
24 which include I believe over 300.

25 I'm looking at -- I'm basing it

21

1 off of the interviews that I've conducted
2 of human trafficking victims, of human
3 traffickers. I've written a peer reviewed
4 journal article based on my interview of
5 convicted human traffickers.

6 I know you said focus on labor
7 trafficking but also just distinctions
8 between things that trafficking is similar

9 to. So for example, what is the difference
10 between a labor law violation and
11 trafficking. What are the difference
12 threads and seams in those types of cases
13 and making as much of a distinction as I
14 can to show what is consistent with
15 trafficking. In addition to the Delphi
16 survey, I think Urban Institute has
17 published a protocol for identifying
18 trafficking as well as the Vera Institute.
19 My recollection is since 2009 I believe --
20 the reason why I relied upon in part the
21 Delphi apparitional indicators, I believe
22 it was the first, if my recollection serves
23 me, it was the first and it's been the most
24 long-standing method for looking at kind of
25 consistencies or identifying potential

22

1 cases. But since then there have been well
2 over a dozen that are used by law
3 enforcement, that are used by expert
4 witnesses of indicia protocol for
5 identifying trafficking.
6 So it really is a combination

7 of a number of things. But also just given
8 my expertise, I'm looking at the specific
9 information that's presented in a case.
10 What are the plaintiffs saying, what are
11 the defendants saying. I have never and
12 would never take everything of what one
13 side is saying as true. I'm doing
14 independent evaluation. And quite
15 honestly, I've turned down more cases than
16 I've accepted in my expert witness career.
17 So all that's to say I'm looking at a
18 combination of factors.

19 Q. Okay, I'm going to walk through
20 a couple parts of your answer. And you
21 mentioned that you personally reviewed over
22 300 cases. When you refer to cases, are
23 you referring to legal cases or interviews
24 with potential trafficking victims?

25 A. When I'm referring to cases,

1 I'm referring to legal cases.

2 Q. So you're basing your opinion
3 in part on your review of legal opinions or
4 complaints?

5 A. Legal opinions or complaints.

6 I would say a combination thereof. Because
7 many of the complaints don't necessarily
8 yield opinions either by federal JSHGS or
9 plea bargain. It's hard to say. So the
10 300 case I reviewed include a combination
11 thereof.

12 Q. And do you have any legal
13 training?

14 A. What do you -- as far as going
15 to law school? No. But my department is
16 criminology. I took a number of law
17 related classes taught by attorneys.

18 Q. But you're not an attorney?

19 A. No, absolutely not, no.

20 Q. And you've never been to law
21 school.

22 A. No, ma'am.

23 Q. I'm just reading back over your
24 answer. You mentioned that part of your
25 experience on which you're basing your

1 opinion are interviews that you've
2 conducted. Can you just tell me what the

3 context of those interviews are?

4 A. Some of them are qualitative
5 interviews that were conducted for research
6 purposes. Some of them were interviews
7 conducted for specific cases. The
8 qualitative interviews that I conducted for
9 research purposes, some of them are
10 discussed in my book, some of them are
11 discussed in my peer reviewed journal
12 articles.

13 I know that this isn't directly
14 related, but I also received formal
15 training on trafficking as well as methods
16 for conducting these interviews. While in
17 graduate school. Specifically I took
18 graduate level course work on human
19 trafficking, human smuggling, immigration
20 related issues, crime, things like that.

21 But the interviews were a
22 combination of cases that I worked on and
23 qualitative interviews for research.

24 Q. And you mentioned that you --
25 when you base your opinions on the state of

1 the science research and information, can
2 you describe to me what is the state of the
3 science research that you're basing your
4 opinions on?

5 A. And I talk about this a lot in
6 my book as well as in the number of
7 articles that I've written, unfortunately
8 due to the clandestine nature of the crime,
9 trafficking remains very, very difficult to
10 research and identify. And therefore,
11 there is I would say a dearth of reliable
12 information. So when I'm saying the state
13 of science research, it is the best
14 research that is available. However, it is
15 not without limitation.

16 So case in point, in the field
17 of criminology, many criminologist like
18 myself office use the uniform crime report.
19 The uniform crime report didn't even have a
20 date point on trafficking until 2013. And
21 to this day it is very limited in that a
22 number of police agencies still don't
23 report trafficking, they misidentify things
24 of that nature. So I'm relying upon the
25 best information that's available, but it

22 career.

23 Q. Okay, so let's look back at
24 page 8 if we can.

25 A. Sure.

28

1 Q. Look at opinion 4.

2 A. Okay.

3 Q. Here you opine that the data
4 science research on tracking indicia
5 suggests that the indices of the nature of
6 the job, location, employer JSHGS access to
7 educational opportunities can be strong
8 indicia of trafficking."

9 A. Mm-hmm.

10 Q. What is the state of the
11 science research that you are referring to
12 in this opinion?

13 A. In this opinion it includes the
14 Delphi survey, it includes the -- which I
15 think since that's the first, it has been
16 replicated and supported by substantial
17 other sources. So I would say that the
18 Delphi survey is one and perhaps the first,
19 but we see those strong indicia or we see

20 that those themes of trafficking indicia
21 replicated for example in the Polaris
22 projects identification protocol that came
23 out two years later in 2011. We see
24 them -- similar indicia in the Urban
25 Institute, Vera Institute, and I believe

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1 the Department of Health and Human Services
2 also released one. So I would say Delphi
3 was probably the first, but it is supported
4 thereafter and there hasn't been anything
5 to I guess falsify what they have included.

6 Q. Okay, so --

7 A. And I would also just say, like
8 state of science research also includes my
9 review of extant cases. So the cases that
10 I reviewed, those strong indicia tend to be
11 prevalent in other cases where trafficking
12 is found to be present. And they're not
13 all present, so again, you do need to take
14 the totality of those circumstances, but
15 there are consistent threads across
16 trafficking cases.

17 Q. And how do you identify whether

16 it's a strong or not a strong indicator, is
17 that fair?

18 A. It's one I would say. It's one
19 in a combination of factors.

20 Q. Do you generally agree with the
21 way that the fell die survey has
22 characterized the indicia?

23 A. Do I generally agree with the
24 way the Delphi survey has characterized
25 indicia. I'm not sure I understand what

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1 you're asking there.

2 Q. Let me rephrase it then. You
3 mentioned that nothing has -- you're not
4 aware of anything that has come out since
5 the Delphi survey to falsify what they
6 included. Is that a fair characterization
7 of what you said?

8 A. Yeah, I'm not aware of any
9 rigorous empirical research that has
10 completely undermined the strong indicia
11 that they identified in that particular
12 survey, no. I'm not aware of any.

13 Q. Are you aware of any empirical

14 research that has completely undermined
15 medium indicia that they've identified in
16 that survey?

17 A. The medium indicia were a
18 little bit more expansive. So I'd have
19 to -- I mean, there were more of them, but
20 no, I'm not aware of any that have
21 completely undermined the medium indicia.

22 The only thing that I would say
23 with the medium indicia is there is a lot
24 of overlap between cases that might not
25 necessarily be trafficking, which is why

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1 they put it at a level lower. But I this I
2 that from what I found, there is more
3 consistent support for the strong indicia,
4 which is essentially probably why they made
5 it strong indicia because there was greater
6 consistency than the medium indicia.

7 So I'm not aware of any
8 empirical research that has invalidated it,
9 but in my experience, I don't think that
10 there is as strong support from the other
11 corroborating sources; for example, reviews

12 of case law, reviews of extant state of the
13 science research, so on and so forth.

14 Q. And do you agree with the
15 Delphi characterization of what are strong
16 and what are medium indicators?

17 A. And by do I agree with the
18 characterization, do I agree with what
19 level they placed those indicia at?

20 Q. Exactly. Yes.

21 A. I would say I agree with the
22 strong for sure. For some of the medium, I
23 perhaps would have moved them to weak.

24 Q. I guess to be complete, I
25 should ask are you aware of any empirical

33

1 research that has completely undermined the
2 weak indicia that are identified in the
3 Delphi survey?

4 A. I mean, to tell you the truth,
5 I'm not even aware of any study that has
6 specifically evaluated -- and I talk about
7 this I think in my report. Or if not in
8 that report, in other reports. I'm not
9 aware of any study that has specifically

10 since the -- tested the sensitivity and
11 specificity of each of those levels of
12 indicia. So -- or a study that I would
13 rely upon to say that it completely
14 invalid. We're just looking at those
15 indicia, are they seen often, have they
16 been replicated in other operational
17 indicators and other protocols. So I
18 haven't seen anything to undermine the weak
19 indicia, no.

20 Q. And it sounds like that's
21 because generally there have not been
22 surveys either way testing kind of the
23 scientific validity of these indicators.

24 A. I would say there have been
25 studies, but as far as the method logical

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1 rigor of those studies and whether they're
2 saying they're specifically testing the ILO
3 operational indicators, those are different
4 questions. So for example, I know the
5 Kimball collaboration in 2011 did a
6 systematic review of all of the
7 interventions to combat trafficking

17 ask the question. Some of the indicia that
18 have been included in the Delphi survey you
19 indicated or other surveys are present in
20 this case, whether they're strong or weak.
21 You're not testifying today on whether or
22 not the fact that those indicators are
23 false positives. Just the fact that they
24 exist is not enough in your view to make it
25 trafficking.

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1 A. My opinion for this case is the
2 facts in this case are not consistent with
3 trafficking. They're not consistent with
4 trafficking as far as stay of the science
5 research is concerned, as far as extant
6 case law is concerned, as far as
7 operational indicators are concerned.
8 They're not consistent with the interviews
9 that I've conducted with victims of
10 trafficking and with traffickers, although
11 I did not conduct any interviews of any
12 party in this particular case, I did review
13 the transcripts from deposition testimony.
14 So my opinion is that there is not

15 consistency between those factors in this
16 particular case.

17 Q. And does the fact that a
18 victim's experience may be atypical or
19 inconsistent with other victims mean that
20 they've not been trafficked?

21 A. Does the victim's experience
22 that they're atypical or not consistent
23 with -- I think that even though there are
24 nuances -- so absolutely, take the totality
25 of the circumstances, there are nuances

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1 across methods of recruitment and control,
2 the types of trafficking that exist, the
3 types of victims that are susceptible to
4 being trafficked. Even though there are
5 nuances though, there is sort of a common
6 thread of modern slavery, of kind of the
7 underlying factors that you do see exist in
8 each and every case. And there might be
9 different combinations thereof, but there
10 are absolutely common threads.

11 So I would not say there is an
12 atypical case that doesn't have these

13 common threads. So therefore, even though
14 there are nuances in the details or
15 circumstances, the recruitment control
16 methods, there are common threads across
17 cases.

18 Q. And what are those common
19 threads?

20 A. So not in exploitative case,
21 but a common thread that you see across
22 many cases is, in particular, international
23 cases is confiscation of identification
24 documents. Again, not exploitative case
25 but in quite a few cases. But generally,

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1 the control of somebody's housing, their
2 finances, their access to communication,
3 their transportation, their general being,
4 there is some sort of control over them as
5 a person that is akin to modern slavery.
6 In many cases you do see -- or in cases
7 where you do see debt, the debt and the
8 indebtedness is to the trafficker. There
9 is a common thread across cases of victims
10 being forced to work longer hours, more

11 work days than anticipated.

12 So those are just a few common

13 threads. But again, the combination

14 thereof might be a little bit different.

15 But those are absolutely common themes that

16 you see across cases.

17 Q. You mentioned that there are

18 factors that exist in exploitative single

19 and each and every case. What are the

20 factors that exist in each and every

21 trafficking case?

22 MR. BILLINGS: Objection.

23 Misstates the testimony.

24 Q. I'll start by reading your

25 testimony for you. There is a sort of

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1 modern thread of modern slavery of the kind

2 of underlying factors that you do see exist

3 in each and every case. What are those

4 underlying factors that exist in each and

5 every case?

6 A. The underlying factor is being

7 enslaved. Modern slavery. That is the

8 common thread. It is a modern form of

9 slavery that you see in each and every
10 trafficking case. How that manifests --

11 Q. Where does --

12 A. -- can differ. But modern
13 slavery is in each and every trafficking
14 case.

15 Q. So in order to establish a
16 trafficking claim, you need to show some
17 evidence of modern slavery. Is that your
18 testimony?

19 A. Yes, ma'am.

20 Q. If you look back at your
21 opinions, your opinion 8 you criticize
22 Ms. Burke's report because you believe that
23 her opinions are not supported by reliable
24 principles and specific methods.

25 A. Opinion 8?

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1 Q. Sorry, opinion 9.

2 A. Yes.

3 Q. What are the scientific methods
4 that are the basis of your opinion? I just
5 want you to name the methods, not explain
6 all the details of it.

9 Q. So in addition to recruiting,
10 harboring and/or transporting individuals
11 for trafficking, 1590 also prohibits
12 providing or obtaining the labor of any
13 person, is that correct?

14 A. No. It does not. And that is
15 not correct. It says the providing or
16 obtaining of any labor or services in
17 violation of this chapter. Providing or
18 obtaining labor is not -- that's not --
19 it's in violation of the chapter, which is
20 the TVPA, which is trafficking.

21 Q. I guess -- I understand that
22 you also have to prove that there was a
23 violation of the chapter. But my point is
24 that in addition to providing for liability
25 for people who are involved in the

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1 recruitment, transportation and transfer,
2 it also provides liability for people who
3 are involved in providing or obtaining the
4 forced labor. Is that a fair read?

5 A. Say that again. In all
6 honesty, I think that the read of the

7 letter of the law is clear. I'm not sure
8 why you're using different terms there as
9 to whether or not it provides for
10 liability. This is a criminal statute.
11 And I think that it lays out in another
12 area, which it doesn't look like it's
13 provided, what specifically is violation of
14 the chapter. I do have -- I don't know if
15 I included it -- I don't think I included
16 that section -- or I didn't talk about this
17 section in my report for you. But I have
18 talked about it in other cases. And
19 there's a specific -- they delineate what's
20 in violation of the chapter. So I don't
21 feel comfortable --

22 Q. It's your view that the TVPA is
23 very clear? That the letter of the law is
24 clear?

25 MR. BILLINGS: Objection.

1 Misstates the testimony.

2 A. No, that is not my opinion and
3 that's not what I said.

4 Q. So when you say that the letter

1 did a quick scan.

2 Q. So as far as you know, showing
3 evidence of slavery or trafficking is not
4 required to prove a violation of 1589, is
5 that correct?

6 A. Slavery or trafficking is not
7 required to prove 1589?

8 MR. BILLINGS: I'm going to
9 object to the extent it calls for a
10 legal conclusion. I understand
11 that's sort of what we're talking
12 about here, but I will say that the
13 statute speaks for itself.

14 A. I know that legal conclusions
15 are not admissible. So I'm just going to
16 say that I think that -- I'll just state
17 that it doesn't mention the words
18 "trafficking" in the statute or "slavery"
19 in the substitute, but the title of the
20 chapter is peonage slavery. So it's
21 mentioned in the title. Peonage slavery
22 and trafficking person. So I think it's
23 pretty clear that it does encompass slavery
24 and trafficking.

25 Q. So in this case you are not

1 providing a legal opinion, is that correct?

2 A. A legal conclusion? Drawing
3 legal conclusions, opining on legal
4 conclusions? No, and that's why I have not
5 said that the victims are or are not -- I
6 mean, the purported plaintiffs -- the
7 plaintiffs are not -- they are or are not
8 victims of trafficking. I cannot -- that's
9 a legal conclusion. That is left up for
10 the trier of fact. My role is to educate
11 on trafficking related issues, on state of
12 the science research, on technical facts
13 and to assist the trier of facts based off
14 of the specialized information that I have.

15 And so I would never opine somebody is or
16 is not a victim. But I can opine whether
17 this allegations in the case are consistent
18 with trafficking. So legal conclusion --

19 Q. But when you're opining about
20 whether the allegations are consistent with
21 trafficking, you're not offering a legal
22 opinion about what trafficking means under
23 the TVPRA, is that correct?

24 A. On what trafficking means under
25 the TVPRA? I think that I have opined on

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1 that, and I have stated and offered my
2 specialized understanding based on state of
3 the science research on what is consistent
4 with trafficking and what was the
5 congressional intent behind the trafficking
6 laws. And so I don't -- I think it's sort
7 of difficult to answer your question
8 because that isn't one of my specific
9 opinions. But absolutely I am looking at
10 these statutes and I'm stating whether the
11 allegations, even if accepted as true, are
12 consistent with trafficking.

13 Q. When you refer to trafficking
14 you're referring to trafficking as it's
15 defined by these statutes.

16 A. Trafficking as defined by these
17 statutes, trafficking as -- based on my
18 specialized experience and understanding
19 cases where it has been -- trafficking has
20 been demonstrated and the trier of facts
21 have determined trafficking. So a number

22 of things in addition to these statutes.

23 Q. I'm just trying to clarify what
24 you mean by -- when we refer to
25 trafficking, are you specifically referring

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1 to actions that would be a violation of the
2 TPRA?

3 A. The TPRA or TVPRA?

4 Q. TVPRA.

5 A. Yes. Things that are in
6 violation of the TVPRA, correct.

7 Q. And in fact, if we look at
8 pages 21 through 24 of your report, you
9 spend some time describing the different
10 provisions of the TVPRA, is that fair?

11 A. 21 to 24. Correct.

12 Q. And one of the points that you
13 make in that section repeatedly is that
14 it's important to note that defendants in
15 this case have not been indicted or
16 convicted of any criminal offense. Do you
17 see that?

18 A. Yes, I think that's important
19 to note.

10 protocol. And they have engaged in
11 empirical validation here in the United
12 States on indicia that -- again, it's not
13 set up exactly like this, but there's
14 inconsistencies across the two.

15 Q. Do your Urban Institute
16 indicators or any other indicators created
17 by U.S. sources determine whether or not
18 U.S. law has been violated?

19 A. Again, a trier of facts, so a
20 judge or a jury, ultimately makes the
21 determination whether U.S. law has been
22 violated. And I have not opined to that
23 effect in my report. Because that would be
24 a legal conclusion.

25 Q. So in your report you focused

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1 on what you called the strong indicators
2 from the Delphi survey. Do you need to
3 have strong indicators -- does the delta
4 survey say that you need to have strong
5 indicators in order for there to be
6 trafficking?

7 A. I wouldn't say my report

8 focuses on the strong indicators, but in my
9 reference to the ILO -- in my reference to
10 the ILO survey, I did discuss the strong
11 indicators as opposed to the medium or
12 weak indicators. And that was done
13 purposely because those factors are more
14 consistently seen across cases here in the
15 United States, specifically trafficking
16 cases as opposed to other types of cases.

17 So do they need to be present?

18 No. But are they often present? At least
19 some of them in trafficking cases? Yes.
20 And are they consistent with the cases that
21 I've seen and worked on, yes.

22 Q. And does the Delphi survey
23 actually provide that in order to assess
24 the positive -- strike that.

25 Does the Delphi survey agree

1 that in order to be assessed as a positive
2 trafficking -- or potential trafficking
3 victim, you need to have at least one
4 strong indicator?

5 A. Say that again. Because you

25 bureau which is not relevant to my research

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1 expertise for human traffics. I have
2 served -- I guess it's technically -- could
3 be under oath, but I have taught at George
4 mason University in the universe of
5 Maryland Park but it's not listed under my
6 expertise.

7 Let me see, there are other
8 positions that -- I mean, different
9 consulting positions. So for example, I
10 think it's mentioned in my summary of
11 expertise, but served as a pier reviewer
12 for Department of Justice in reviewing
13 grant applications. But those are, like,
14 smaller positions; again, not research
15 based and not focused on human trafficking.

16 Q. And if we look at your list of
17 expert witness cases on page 42, can you
18 please identify for me which of those cases
19 involve labor trafficking as opposed to sex
20 trafficking?

21 A. On page --

22 Q. 42.

23 A. So Keo Raths in 2017 is a labor
24 trafficking case, or alleged labor
25 trafficking case.

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1 Q. Any other of those cases listed
2 on 42 and 43?

3 A. Not on 42 or 43. But on 50 --

4 Q. I'm going to ask you about 50
5 right now. So not on 42 or 43. Okay. So
6 if we look at 49 and 50, other than the rat
7 that case, are there any other cases that
8 involve trafficking on this list?

9 A. Well, so the Gilbert versus Tai
10 Quan Do case, I don't know if that's
11 listed -- yeah, I don't think it's listed
12 on the first one. That one -- there were
13 allegations of sex but they conceptualized
14 sex as labor trafficking. So that's the
15 USA-Tai Quan Do. So it was treated as a
16 labor trafficking case. I think those are
17 the only two.

18 Q. Okay. I'm going to ask you a
19 couple of questions about your engagement
20 in this case. If you could just tell me

11 Q. We can turn to tab 14. Include

12 File Not Found?

13 Q. Can you please read the top of
14 the page, the sentence that begins "this
15 paper challenges."

16 A. At the top of which page?

17 Q. The top of the first page of
18 the article.

19 A. "This paper challenges the
20 abolitionist JSHGS of all women engaged in
21 sex work as victims of traffic -- as
22 victims -- sorry, as victims trafficked in
23 the seconds industry and introduces the
24 concept of secondary exploitation where
25 these representations are reframed and

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1 repackaged for consumption by opportunistic
2 actors while arguably further stigmatizing
3 and marginalizing already vulnerable women.

4 Q. And has the plaintiff in
5 pursuing this action done anything that
6 stigmatizes or marginalizing already
7 vulnerable women?

8 A. No. Well, I think that you can

9 look at repackaging or pleading
10 non-trafficking claims, potentially
11 non-trafficking claims as trafficking
12 claims could be stigmatizing and
13 marginalizing to actual survivors of
14 trafficking who are found in situations of
15 modern slavery. But would I conclude that
16 the plaintiffs in this case did that? No.

17 Q. If we can turn to appendix G of
18 your report.

19 A. Um mum.

20 Q. I think you testified earlier
21 that you had created this report starting
22 from a database of about 300 trafficking
23 cases, is that correct?

24 A. I believe that mischaracterized
25 what I testified to. I did testify that

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1 the sample of human trafficking cases --
2 well, I did testify that I have reviewed in
3 the past 300 cases. I testified to this
4 particular sample came from the Michigan
5 mall center of human trafficking database
6 that was provided to me in 2011 which did

7 include I think 195 causes. And this is a,
8 as the Appendix G states, a sample of those
9 cases.

10 Q. And it's a sample that you
11 created for this case?

12 A. Yes -- well, I wouldn't say
13 that I created it for this case. I've used
14 it in other cases. But I've referred to it
15 in other cases as well. But yes, I
16 included it in this case because I thought
17 it was relevant.

18 Q. I guess I just want to
19 understand. So you started with a list of
20 195 cases, and you got down to a smaller
21 list. Is this smaller list a smaller
22 subset that you identified particularly for
23 this case or is it a subset that you've
24 used in the past as representative
25 examples?

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1 A. I've used it in the past as
2 representative examples.

3 Q. And it's based on a database
4 that you received in 2011, is that correct?

5 A. Correct.

6 Q. So it doesn't have any cases
7 after 2011?

8 A. No because I think, as your
9 purported expert also identified, the
10 Michigan law center no longer has this
11 database up. I think it had transferred to
12 the Texas Christian University at one
13 point. But as far as I know, it's no
14 longer in existence. So I mean, all I have
15 is -- I've reviewed, obviously, cases that
16 have come out since then, but as part of
17 this database, no. But the reason why I
18 wanted to include it is very much to kind
19 of pre-empt any type of accusation that I
20 specifically chose the worst cases or that
21 I wrote these summaries. These summaries
22 were provided as part of that database in
23 2011. I did, however, highlight or bold
24 certain pieces of information that I
25 thought were particularly relevant.

1 Q. And when you were making
2 decision, and I'm really here not trying to

3 call any kind of criticism. I just want to
4 understand your process. When you're
5 making the decision to go from 195 to this
6 set of cases, what were the criteria you
7 were using to choose which cases to
8 include?

9 A. So since this -- IP mean, there
10 were a number of so one criteria was did it
11 include enough information to actually draw
12 any type of I guess thread across cases.
13 Some of their summaries included one or two
14 lines. And there was just not enough
15 information.

16 Two, if the descriptions did
17 not include any indicia of trafficking and
18 focused solely on just kind of sex with
19 minors; so for example, some of the cases
20 were saying the minor was raped, the minor
21 was pimped out, the minor was prostituted,
22 things like that I didn't think were
23 particularly relevant or it just was kind
24 of redundant to other cases that might have
25 been included. Some of the cases, as I had

1 necessarily. But I think that this sample
2 has a -- I think it's a representative
3 sample.

4 Q. And you mentioned that you --
5 if the description wasn't long enough, you
6 kept it out of the sample. For the ones
7 that they did have a description, and I
8 think you said these descriptions were
9 written by the people that put the database
10 together, did you review the actual case
11 document as well?

12 A. For some of them, yes. For all
13 of them, no.

14 Q. And you didn't make any changes
15 to the description based on what you
16 reviewed in the case documents?

17 A. Based on what I reviewed in the
18 Michigan law center provided database, not
19 to my recollection, no.

20 Q. And who was it who was putting
21 the Michigan law center database together?

22 A. I don't really remember. I
23 honestly don't remember. I want to say

24 that it was law students that were working
25 for the Michigan law center at the time. I

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1 know -- I think Bridget car is over it now,
2 but I don't think that -- I don't believe
3 that she was over it at the time this was
4 provided to me. So I really don't recall.

5 Q. And do you know what the
6 criteria was for including cases in the
7 database?

8 A. I don't recall.

9 Q. Have you -- since you issued
10 your report, have you attended any of the
11 depositions in this case?

12 A. No. Well, no, excuse me, I did
13 attend Ms. Burke's deposition.

14 Q. But you didn't attend any of
15 the other depositions.

16 A. No.

17 Q. Have you reviewed any
18 transcripts from the other depositions?

19 A. As of present, no.

20 Q. You previously referred to --
21 I'll call them indicators, and you can

22 correct me, but indicators created by I
23 think the Urban Institute, is that correct?
24 It might have been a protocol. Does that
25 sound familiar?

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1 A. Yes. I think the Urban
2 Institute has a few publications, and I
3 know that they're presently retesting -- I
4 kind of don't want to breach any
5 confidentiality, but they're currently
6 refining some of their past protocol and
7 indicia through research.

8 Q. And can you turn to tab 19.
9 You can tell me if it's probably referred
10 to as a protocol or an indicia report from
11 the Urban Institute that you're familiar
12 with.

13 A. It's a research report that I'm
14 familiar with. This one was published in
15 2014. I'm familiar with the work of Jack
16 McDevitt, Amy Farrell and Meredith Dank.

17 Q. Is this part of what you
18 consider as the state of science research
19 on trafficking?

14 when they're required -- yeah, absolutely,
15 when they're required to pay them to the
16 employer. So for example, paying the
17 alleged trafficker fees for transportation,
18 paying the alleged trafficker fees for
19 housing, for food. So on and so forth.
20 But there's just a little bit of an
21 inconsistency that I'm having a hard time
22 reconciling because he said his manager
23 said they would have to pay for food and
24 then he fours lines down say everything was
25 free is what he was told. I don't know --

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1 Q. So if there was a situation
2 where the recruiter told them in the
3 Philippines that everything was free and
4 then when they arrived on the job site the
5 manager told them that they would have to
6 pay for it, would that be kind of an
7 evidence of deceptive recruiting?

8 A. Again, you have to look at the
9 totality of the circumstances. Does
10 alleged employer know what the recruiter is
11 telling them. Are the fees being -- is the

12 alleged -- is the employer requiring the
13 potential victim to be paying those fees
14 for transportation, for food, for housing
15 to the employer. And in which case --
16 again, it depends on the direction of the
17 payments.

18 So in a trafficking situation,
19 more often than not, if fees were levied
20 that were not expected is being paid to the
21 trafficker, it makes -- we're talking about
22 exploitation. We're talking about modern
23 slavery. It makes absolutely no sense
24 where it's paid to a third party where the
25 alleged trafficker receives no financial

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1 benefit.

2 Q. Well, they receive a financial
3 benefit because they're not paying for
4 housing, food or transportation that they
5 told the employee they would provide.

6 Right?

7 A. Again, you're kind of -- so
8 they told -- that the employer told the
9 employee that they would provide?

10 Q. Let's assume for this
11 hypothetical that the employer is aware of
12 what the recruiter is telling employees.
13 If the employer knew that employees were
14 being told in the Philippines that they
15 would have their food and housing and
16 transportation provided and then he did not
17 pay it to them when they arrived in
18 America, is that a form of deceptive
19 recruiting?

20 A. If the employer is aware that
21 the recruiter is telling them that you're
22 going to receive free food, housing,
23 transportation and then deliberately does
24 not allow that in that hypothetical,
25 certainly it could be deceptive in

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1 recruiting if he's aware of what's being
2 said by the recruiter.

3 Q. And is that type of deceptive
4 recruiting something that might occur in a
5 trafficking situation?

6 A. Again, typically in a
7 trafficking situation, if there is

8 deception in recruiting, there's still an
9 element of control over the housing, the
10 food, the transportation, the slavery
11 aspect of it. So even if there was --
12 again, deception alone isn't tantamount to
13 trafficking. You need to look at
14 exploitation and you need to look at how
15 many indicia are present. So the totality
16 of the circumstances. So is someone being
17 told you are going to receive free food,
18 housing and transportation, is that alone
19 trafficking? No. And I would actually say
20 there would be -- if that was the only
21 indicia, there would be a number of false
22 positives based on that alone, just based
23 off of regular employment disagreement.

24 Q. So you don't think fraud by
25 itself is a sufficient indicia of

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1 trafficking.

2 A. Fraud alone? No.

3 Q. Let's turn back to your report,
4 page 19. Unfortunately, the printout I
5 have did not fully print out this picture.

6 I don't know, does yours look better than
7 mine?

8 So on page 19 you stated that
9 the evidence indicates that all potential
10 class members except for Ms. Casliao
11 actually did leave their employment with
12 the defendants before their expiration of
13 the visas. Did that your understanding of
14 the record based on the evidence you've
15 reviewed?

16 A. Based on the evidence I
17 reviewed, yes.

18 Q. So you believe that Ms. Casliao
19 stayed through the expiration of her visa?

20 A. As far as I can recall.

21 Q. And --

22 MR. BILLINGS: Sorry,
23 Catherine, would it be possible to
24 share on your screen the pages you're
25 looking at so we can see the whole

1 thing? Because mine didn't print out
2 either.

3 Thank you.

4 Q. I'm speaking specifically?

5 Q. Your understanding is that all
6 of the other potential class members
7 actually did leave their employment with
8 the defendants before their visas expired,
9 is that correct?

10 A. When I'm referring to the class
11 members I'm referring to Casliao, link
12 KWIEN and Garcia. Is so you're only
13 referring to the three named plaintiffs.

14 A. Yes.

15 Q. Because you haven't reviewed
16 any testimony or really any documents that
17 the other class members have --

18 A. Not that I recall. I know for
19 a fact I have not reviewed their
20 depositions.

21 Q. And so in your view, if an
22 individual is able to leave a trafficking
23 situation, is that evidence that they're
24 not actually trafficked?

25 A. In and of itself, no. But

1 again, I'm talking about the totality of

2 the circumstances.

3 A. For example, Ms. Casliao did
4 not leave. Is that indicia that she was
5 trafficked? No. Especially considering by
6 her own testimony she said it isn't like I
7 was forced to work. No one forced me to
8 work. So I don't think that in and of
9 itself it is indicia or not. However, in
10 trafficking situations, you do see --
11 typically see forced, fraud, coercion,
12 deception, threats after initial
13 recruitment, period, to coerce or compel
14 them to stay in an exploitative situation in
15 a trafficking case.

16 Q. Okay, so you'll usually see the
17 employer take steps to compel them to stay
18 at the worksite even if they wish to leave.

19 A. Yes. Typically.

20 Q. If you turn to page 26 at the
21 bottom of page 26 you write Garcia claims
22 that he worked as a server as expected but
23 was paid approximately 2.3 per hour plus
24 tips.

25 A. Yes.

25 not? Again, you need to take it in the

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1 totality of the circumstances. I've seen
2 situations, allegations of trafficking
3 where minimum wage was met, where it wasn't
4 met. So I think you need to take the
5 totality of the circumstances.

6 Q. Okay, so in and of itself,
7 whether or not a worker received minimum
8 wage isn't evidence of trafficking.

9 A. Absolutely not, no. I mean,
10 I've worked as a server during graduate
11 school and I did not make minimum wage when
12 I was a server at times.

13 Q. So why did you include in your
14 report the fact that he was being paid --
15 received minimum wage?

16 A. Because again, I'm looking at
17 the totality of the circumstances here. I
18 think the fact that, you know, whether you
19 do receive minimum wage, whether you -- I
20 mean, again, it's the totality of the
21 circumstances. Whether there were overt
22 threats, whether you do have a class member

23 saying I was not forced to work, I think --
24 I mean, all of this is potentially
25 important. But in and of itself, the fact

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1 that he was paid minimum wage, that alone
2 might not make a difference. But in
3 looking at the totality of the
4 circumstances saying whether this is
5 consistent with trafficking, whether it's
6 housing, food, transportation, whether he
7 was surveilled, all of that is important to
8 say whether this is consistent with
9 trafficking, whether they were forced and
10 compelled to work longer than expected work
11 hours, a very, very typical allegation in
12 trafficking cases. All of that is very
13 important to look at and to review when
14 stating and opining whether something is or
15 is not consistent with trafficking.

16 Q. And what do you understand to
17 be the amount of wages that Mr. Garcia was
18 promised by the recruiters?

19 A. I believe I have that on page
20 26. He says that he was supposed to get

21 \$9.63 per hour. Right?

22 Q. Yup. And the fact that he was
23 given a different wage when he got there,
24 you don't think is -- do you think that's a
25 material indicator of trafficking, not

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1 relevant to trafficking?

2 A. I'm not sure how else I can say
3 this. I'm not trying to be difficult, but
4 I think you need to take it in the totality
5 of the circumstances. Right? In and of
6 itself, does that mean he was trafficked,
7 absolutely not. Is it something that was
8 considered in addition to a multiple
9 other -- a number of other factors? Yes.
10 But does that alone suggest -- even if I
11 accept that it's true, even if I say this
12 is true and that's what he was promised and
13 all parties knew about that promise and it
14 wasn't received, that alone is not
15 tantamount to trafficking. It is not
16 consistent with trafficking. That alone is
17 not enough to say this is consistent with
18 trafficking.

21 \$9.63 per hour. Right?

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11 accept that it's true, even if I say this
12 is true and that's what he was promised and
13 all parties knew about that promise and it
14 wasn't received, that alone is not
15 tantamount to trafficking. It is not
16 consistent with trafficking. That alone is
17 not enough to say this is consistent with
18 trafficking.

3 indicia of trafficking. Is non-explicit
4 threats of violence also an indicia but
5 just weaker or do you think it's not an
6 indicia of trafficking at all?

7 A. Again, you need to look at what
8 is considered a threat or not. It's
9 certainly not a strong indicia. I mean, in
10 trafficking cases, when there are threats
11 of violence they tend to be pretty overt.

12 So for example, in the case
13 which is included in my appendices of U.S.
14 v. Maximum /PHEPBG /KOEU, I believe it was
15 a trafficking case but the women were labor
16 trafficked in strip clubs, one of the
17 specific threats the trafficker made was if
18 you don't do as you're told, I'm going to
19 stomp you so hard in your forehead that the
20 shoe size on the bottom of my boot would be
21 imprinted. That's a type of pretty
22 specific -- I have a pretty good memory
23 when it comes to the cases I reviewed. I
24 try to remember as much as I can. But that
25 was a very specific threat that was made

1 against the labor trafficking victims in
2 that case.

3 Typically when you're talking
4 about strong indicia, there are overt
5 threats.

6 Q. So it's your testimony that
7 when there are threats of violence, they
8 tend to be pretty overt?

9 A. In trafficking cases the
10 threats that I have seen, they can be
11 violent, nonviolent, but they're pretty
12 clear to the average person, or in a
13 criminal or civil case the trier of fact of
14 what was intended. And I think that if you
15 look at case law, the intent behind the
16 statement certainly does matter. And so
17 intent to compel exploitation, the intent
18 to use that threat for the purpose of
19 exploitation.

20 So when I'm saying it's overt,
21 it doesn't necessarily need to be I guess
22 as violent as the example that I just gave
23 you. But it tends to be pretty clear of
24 what the intent was.

25 In this particular case, I

1 don't really -- my recollection is the
2 plaintiffs were suggesting that being told
3 about a gun in the glove compartment of a
4 car was a threat. I do not believe that is
5 clear, I do not believe that was the intent
6 behind the statement. And I think that
7 that is a very kind of -- not consistent
8 with the types of threats that I've seen in
9 trafficking cases.

10 Q. So you wouldn't agree with the
11 statement that traffickers can also use
12 more subtle tell forms of control?

13 A. They can use more absolutely
14 more subtle forms of control. But when
15 you're talking about a threat, I don't
16 think that that's what we're talking about.

17 When we're talking about -- when experts
18 are talking about more subtle forms of
19 control, they're talking about, for
20 example, Joanne Reed has published
21 extensively about how trafficker will
22 pretend to be faux families or faux lovers
23 or use romantic relationships to coerce or

24 deceive them into an exploited situation.

25 That is a more subtle form of control.

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1 But I don't think that we're
2 referring to threats, subtle threats that
3 are left open to wide interpretations when
4 we're speaking of what constitutes a threat
5 and what's interpreted as a threat in the
6 situation of trafficking.

7 Q. Could you tell me some examples
8 of subtle forms of control that would exist
9 in the labor trafficking context rather
10 than outside sex trafficking content?

11 A. Okay, a subtle form of
12 control -- again, I'm not aware of a subtle
13 threat that I can refer to. But subtle
14 forms of control I've seen in labor
15 trafficking cases, particular for -- within
16 the nail salon industry of subtly
17 controlling them in exploitative situations,
18 like you're almost about to pay your debt
19 off to us now, it's only one year more or
20 three months more, and then you're kind of
21 extending that debt over time.

6 Q. Are you aware that Ms. Casliao
7 testified that she was afraid of
8 Mr. Schumacher?

9 A. Based on a specific threat?
10 I'm not aware of that, no. Or a
11 specific --

12 Q. Are you aware that she
13 testified that she was afraid of him?
14 That's what I asked.

15 A. I think I recall her saying
16 something to that effect in a general
17 sense. But not anything specific.

18 Q. Do you recall her testifying
19 that Mr. Schumacher contacted her after she
20 left to tell her that he had reported her
21 to immigration?

22 A. I don't recall that specific
23 component of testimony. After she left his
24 employment?

25 Q. Mm-hmm.

1 A. No. I don't recall that
2 specific.

3 Q. And do you recall Ms. Casliao

4 testifying that she learned Mr. Schumacher
5 was going to the hotel where the workers
6 lived?

7 A. That he was going there?

8 Q. That he was visiting the motel
9 on some regular basis.

10 A. I don't recall that. I mean,
11 again, not in any, like, specific sense.
12 Like he went to the hotel to threaten me,
13 he went to the hotel to speak to me, he
14 went to the hotel -- I don't remember any
15 allegation to that effect. If it was
16 mentioned in passing, like he was
17 physically present at the hotel, I don't
18 recall whether she said that or not. But I
19 wouldn't put a lot of weight or any weight
20 on that.

21 Q. Has anything we've discussed
22 today caused you to alter the opinions that
23 you've written in your report?

24 A. No.

25 Q. As of today you don't have any